



# Testimony

## Interim Charge 2.1: Implementation of the Family First Prevention Services Act

*Testimony Submitted to the Texas House Human Services Committee*

by Andrew C. Brown, JD

Chairman Frank and Members of the Committee:

My name is Andrew Brown, and I serve as a distinguished senior fellow of child and family policy at the Texas Public Policy Foundation. Thank you for the opportunity to submit testimony on the state's implementation of the Family First Prevention Services Act.

The Family First Act represents one of the most dramatic overhauls of federal child welfare policy in over 30 years. Its goals of preventing entries into foster care by strengthening families and reducing reliance on institutional placements for children are an important catalyst for creating a more compassionate child welfare system that prioritizes keeping children with their families. We believe that these are important goals and agree with the act's underlying principle of family preservation.

However, there are many challenges and unanswered questions associated with the implementation of the Family First Act. This, combined with our state's projected budget shortfall, requires that Texas take a more limited, fiscally responsible approach to implementation.

### **Texas Currently Lacks the Service Capacity Necessary for Successful Implementation**

Capacity issues related to the availability of prevention services and Qualified Residential Treatment Programs (QRTP) represent one major barrier to effective implementation. Under the Family First Act, federal Title IV-E funds may be used to provide prevention services to children at risk of entering foster care and their families. However, the act limits funding only to programs that have been approved as promising, supported, or well-supported by a [centralized clearinghouse](#) operated by the Administration for Children and Families within the U.S. Department of Health and Human Services. Currently, only 21 programs have been approved on the clearinghouse under one of these three categories. Appendix A of the Department of Family and Protective Services' FFPSA Strategic Plan shows that [only 13 evidence-based prevention services models utilized by the department are also approved on the clearinghouse](#). The actual number, however, is much smaller as Appendix A also shows that for 6 of the 13 programs there is no provider currently operating the program.

The fact of the matter is Texas is a desert when it comes to prevention programs and is not prepared to implement these provisions of the Family First Act at this time. This is unfortunate because the time has long passed for the culture of child welfare to shift away from separating children from their families and toward family preservation. Texas does have an opportunity to correct this, however. While we have no control over the speed with which the Administration for Children and Families approves prevention programs for reimbursement, we do have control over building our own service capacity. Therefore, we recommend that Texas delay implementation of the optional prevention services provisions of the Family First Act until such time as an adequate array of services exists across the state to support focused and effective prevention efforts. During this delay, the department should work with local communities to identify innovative programs already operating in the state and work with providers to get these programs accredited for inclusion on the clearinghouse.

To aid in this effort, the federal government has provided states with one-time grants to support activities directly associated with implementation of the Family First Act. Under the Family First Transition Act, which was enacted in December 2019, Texas was awarded approximately \$50.3 million to spend on activities associated with Family First Act compliance through federal fiscal year 2025. These funds should be accessed to help assess the effectiveness of prevention programs and implement and scale those that actually achieve measurable success at preventing children from entering foster care. In its

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direction to states about how to utilize Transition Act grants, the Administration for Children and Families [admonished states](#) to utilize these funds strategically and “not only to meet short-term goals or fill funding gaps.” It is critical, then, that the department exercise discipline in its utilization of these funds with an eye toward continuing the fundamental transformation of our state’s foster care system that began in 2017 with the creation of community-based care. The Legislature must play a leading role by setting the vision and establishing measurable outcomes for the continued transformation of the Texas foster care system and holding the department accountable to its directives.

#### ***Texas Has No Qualified Residential Treatment Programs***

Another capacity problem standing in the way of implementing the Family First Act relates to what are known as Qualified Residential Treatment Programs. A primary goal of the Family First Act is to reduce the number of children placed in congregate care and residential settings. The act achieves this by limiting the amount of time federal funds may be used to care for a child in one of these facilities to a maximum of 2 weeks ([42 U.S.C. 672\(k\)\(1\)](#)). After this, the state must pay the entire cost of maintaining the child in the facility. There are, however, limited exceptions to this rule. The 2-week time limit does not apply to QRTPs, programs supporting parenting youth, a supervised independent living facility, or a setting specializing in the care of sex trafficking victims ([42 U.S.C. 672\(k\)\(2\)](#)). In order to qualify as a QRTP, a new designation created by the Family First Act, a facility must abide by strict standards, including the use of a trauma-informed model, employment of registered or licensed nursing and clinical staff, integration of the child’s family into treatment, utilize discharge planning, and conduct a formal assessment of all children within 30 days of entry to determine the suitability of a foster home placement ([42 U.S.C. 672\(k\)\(4\)](#)). Texas currently has [no facilities that meet the requirements](#) to become a QRTP.

Solving the QRTP capacity problem is not as simple as bringing existing facilities up to the heightened standards for QRTP classification and could prove to be a costly endeavor. A focus group of residential providers convened by the department found that one of the biggest barriers to providers securing the accreditation necessary to qualify as a QRTP was the initial and ongoing [costs associated with qualification](#). In addition, major questions remain about potential conflicts with Medicaid that could increase the amount of money the state has to spend on these services. Chief among these conflicts is the potential for QRTPs to be considered an [Institution for Mental Disease \(IMD\)](#) by Medicaid under Section 1905(i) of the Social Security Act. States cannot claim federal Medicaid reimbursement for services provided to residents placed in an IMD. This potential loss of Medicaid support along with the new funding structure established by the Family First Act creates the very real possibility that Texas will have to spend more taxpayer dollars on residential services. More broadly, overlaps between services covered by Medicaid and prevention services under the Family First Act will require greater collaboration between the Texas Department of Family and Protective Services (DFPS), the Health and Human Services Commission, and the Texas Medicaid & Healthcare Partnership to avoid wasting taxpayer dollars and failing to provide families with the services they need.

#### **Narrowly Define “Child Who Is a Candidate for Foster Care”**

Perhaps the most significant challenge associated with effective implementation of the Family First Act is defining who qualifies for prevention services. Under Family First, states are given the authority to establish their own definition for “child who is a candidate for foster care” ([42 U.S.C. 675\(13\)](#)). This definition will ultimately be

a key determining factor in how successful states are at keeping families together and reducing the number of children who enter the foster care system. Thus, it is absolutely critical that Texas establish a well-crafted, narrowly tailored definition to help reduce our reliance on foster care, maintain manageable caseloads, and allow frontline staff to more accurately identify children who can safely remain with their families with targeted support services. By contrast, the broad definition advocated by some carries the significant risk of casting too wide a net that will result in increased expense, higher caseloads, unjust and unnecessary contact with the child welfare system, and, most importantly, children who are in imminent danger not being reached and suffering harm that could have been prevented. In addition, a broad definition undermines true foster care prevention by including families who are not actually at risk of separation and prevents us from accurately determining whether prevention efforts are effective at keeping kids out of state care. We strongly urge the Legislature to establish a narrow definition of a “child who is a candidate for foster care” that targets those children and families who are truly most at risk of entering the system.

## Conclusion

The 87th Legislature has an incredible opportunity to build on the successes of the sweeping reforms enacted in 2017 and dramatically improve the Texas child welfare system. This will require the Legislature to take care to coordinate decisions about how to best achieve Family First Act compliance with ensuring the continued expansion and improvement of community-based care. Due to the complexities associated with implementation of the Family First Act, the importance of getting the shift toward prevention right, and the projected budget shortfall the state is facing, we recommend taking a more limited approach to implementation. There are two primary ways that this can be achieved. First, the state can delay implementing the optional prevention services provisions until sufficient service capacity is available. During this time, the state should work with local communities to build capacity utilizing Transition Act funds. A second option is to pursue implementation through a phased pilot program. Under this model, the state could implement Family First prevention services in select regions of the state to test its effectiveness and work through the more complicated details in a limited area. If the Legislature chooses this option, we strongly recommend piloting in regions currently operating under the new community-based care model. This will allow the state to continue building on the early successes community-based care has already achieved and align Family First implementation with the future of the Texas foster care system.

## The Facts

- In FY 2019, DFPS spent \$2.2 billion on child welfare services. About \$354 million—roughly 16%—came from Title IV-E funds.
- During FY 2019, 18,615 Texas children were removed from their homes and 51,417 children were in DFPS custody.
- Currently, 21 programs have been approved by federal government to receive prevention funding under the Family First Act. Only 7 of these have a current provider operating them in Texas.
- Texas does not have a single Qualified Residential Treatment Program to serve highest-needs children.
- Community-based care is already making progress on achieving goals set by the Family First Act. For example, innovations in Region 3b decreased shelter

utilization by 55% and placements in residential treatment facilities by 17.5% between Q1 2018 and Q1 2019.

- Implementation of the Family First Act in Texas will only be successful if Texas is given maximum autonomy to link it with our innovative community-based reforms.

### **Recommendations**

- Given continued uncertainties surrounding the impact of Family First Act implementation and a tight budget cycle, the 87th Legislature should take a more limited, fiscally responsible approach to compliance.
- Ensure that any Family First Act compliance activities are done in concert with the expansion and improvement of community-based care.
- Ensure that federal dollars received through the Family First Transition Act are directed toward building provider capacity and not to meet short-term needs or fill budget gaps.
- Establish a well-crafted, narrowly tailored definition of foster care candidate to help reduce Texas's reliance on foster care, maintain manageable caseloads, and allow DFPS caseworkers to more accurately identify children who can safely remain with their families with targeted support services.

Thank you for your time and consideration. I look forward to working with each of you during the upcoming session in service of all Texas families. ★

## Resources

[\*The Texas Two-Step: Community-Based Care and the Family First Prevention Services Act\*](#) by Andrew C. Brown and Charissa Huntzinger, Texas Public Policy Foundation (July 2020).

“[Family First Prevention Services Act](#)” by National Conference of State Legislatures (April 2020).

[DFPS Rider 15 Report for Community-Based Care](#) by Texas Department of Family and Protective Services (March 2020).

[Operating Budget for Fiscal Year 2020](#) by Texas Department of Family and Protective Services (Dec. 2019).

[Testimony Before the Texas Senate Finance Committee on Community-Based Care](#) by Andrew C. Brown, Texas Public Policy Foundation (Feb. 2019).

[Community-based care: Bringing kids home](#) [Status Report] by Our Community Our Kids (Feb. 2019).

“[CPS Conservatorship: Children in DFPS Legal Responsibility](#)” by Texas Department of Family and Protective Services, DFPS Data Book (2019).

“[CPS Conservatorship: Removals](#)” by Texas Department of Family and Protective Services, DFPS Data Book (2019).

[Child Welfare Financing SFY 2016: A Survey of Federal, State, and Local Expenditures](#) by Kristina Rosinsky and Sarah Catherine Williams, Child Trends (Dec. 2018).

“[Texas Delays Implementing Certain Provisions of the Family First Prevention Services Act](#),” DFPS Bulletin (2018).

[The Bipartisan Budget Act of 2018 \(H.R. 1892\)](#).

[Community-Based Care](#), Texas Family Code Chapter 264, Subchapter B-1 §§ 264.151 - 264.170 (2017).

[The Community-Based Solution for Texas Foster Children](#) by Brandon Logan, Texas Public Policy Foundation (March 2017).

“[Find a Program or Service](#),” Title IV-E Prevention Services Clearinghouse (Accessed Sept. 25, 2020).



## ABOUT THE AUTHOR



**Andrew C. Brown, JD**, is the distinguished senior fellow of child & family policy at the Texas Public Policy Foundation.

Brown has dedicated his career to serving vulnerable children and strengthening families through community-focused, liberty-minded solutions. As an attorney, he has represented children in the child welfare system, advocated for the rights of parents, and helped build families through domestic and international adoption.

Andrew earned his B.A., magna cum laude, in political science from Baylor University and his J.D. from Southern Methodist University Dedman School of Law. He is licensed to practice law in Texas and Virginia. His work on international adoption law and other child welfare issues has been published in leading legal journals and respected media outlets.

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